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**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

Margarita Chavez, an individual,  
Dustin Potter, an individual,

Plaintiffs,

v.

JBS Tolleson, Inc., an Arizona  
corporation, JBS USA Food Company,  
a Delaware corporation,

Defendants.

NO.

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

Plaintiffs, by and through their attorneys undersigned, and for their claims  
against the Defendants, allege as follows:

**PARTIES**

1. Plaintiff Margarita Chavez resides and is domiciled in Clovis, Curry County, New Mexico. Plaintiff is a citizen of the State of New Mexico.
2. Plaintiff Dustin Potter resides and is domiciled in Clovis, Curry County, New Mexico. Plaintiff is a citizen of the State of New Mexico.
3. Defendant JBS Tolleson, Inc., is a corporation incorporated in and existing under the laws of the State of Arizona with its principal office located in Phoenix, Arizona. At all material times, JBS Tolleson, Inc. was in the business of manufacturing and selling food products, including, without limitation, the manufacture and subsequent sale of ground beef products. At all material times, Defendant JBS Tolleson, Inc. engaged in substantial, continuous and systematic contacts within the State of New Mexico, and purposefully directed its activities to New Mexico, including the placement of its goods into the stream of commerce with the intent and expectation they would be purchased by consumers in New Mexico.
4. Defendant JBS USA Food Company is a corporation incorporated in and organized under the laws of the State of Delaware with its principal place of business located in Littleton, Colorado. At all material times, Defendant JBS USA Food Company was in the business of manufacturing and selling food products, including, without limitation, the manufacture and subsequent sale of ground beef products. At all material times, Defendant JBS USA Food Company engaged in substantial, continuous and systematic contacts within

1 the State of New Mexico, and purposefully directed its activities to New  
2 Mexico, including the placement of its goods into the stream of commerce with  
3 the intent and expectation they would be purchased by consumers in New  
4 Mexico.  
5

### 6 JURISDICTION AND VENUE

- 7 5. This Court has jurisdiction over the subject matter of this action pursuant to 28  
8 U.S.C. § 1332(a) because the matter in controversy exceeds \$75,000.00,  
9 exclusive of costs, it is between citizens of different states, and because the  
10 Defendant has certain minimum contacts with the State of New Mexico such  
11 that maintenance of the suit in this district does not offend traditional notions  
12 of fair play and substantial justice.  
13  
14 6. Venue in the United States District Court for the District of New Mexico is  
15 proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the  
16 events or omissions giving rise to the claim occurred in this district.  
17

### 18 GENERAL ALLEGATIONS

#### 19 The 2018 JBS Salmonella Newport Outbreak

- 20  
21 7. In fall of 2018, CDC, public health and regulatory officials in several states,  
22 and the U.S. Department of Agriculture's Food Safety and Inspection Service  
23 (USDA-FSIS) investigated a multistate outbreak of *Salmonella* Newport  
24 infections. Public health investigators used the PulseNet system to identify  
25 illnesses that may have been part of this outbreak.  
26  
27  
28



- 1 8. DNA fingerprinting was performed on *Salmonella* bacteria isolated from ill  
2 people by using techniques called pulsed-field gel electrophoresis (PFGE)  
3 and whole genome sequencing (WGS). CDC PulseNet manages a national  
4 database of these DNA fingerprints to identify possible outbreaks. WGS gives  
5 a more detailed DNA fingerprint than PFGE. WGS performed on bacteria  
6 isolated from ill people showed that they were closely relatedly genetically.  
7 This means that people in this outbreak were more likely to share a common  
8 source of infection.  
9  
10
- 11 9. As of March 21, 2019, 403 people infected with the outbreak strain  
12 of *Salmonella* Newport were reported from 30 states. Illnesses started on  
13 dates ranging from August 5, 2018 to February 8, 2019. Ill people ranged in  
14 age from less than one year to 99, with a median age of 42. Forty-nine percent  
15 were male. Of 340 people with information available, 117 (34%) were  
16 hospitalized. No deaths were reported.  
17  
18
- 19 10. State and local health departments asked ill people questions about the foods  
20 they ate and other exposures in the week before they became ill. Of 277  
21 people interviewed, 237 (86%) reported eating ground beef at home. This  
22 percentage is significantly higher than results from a survey of healthy people  
23 in which 40% of respondents reported eating any ground beef at home in the  
24 week before they were interviewed. Also, several unrelated ill people ate  
25 ground beef at the same events or purchased ground beef at the same grocery  
26  
27  
28

1 store chains, suggesting that the contaminated food item was served or sold  
2 at those locations.

- 3  
4 11. Officials in Arizona and Nevada collected opened and unopened packages of  
5 ground beef from ill people's homes. Officials also collected unopened  
6 packages of ground beef from retail locations. The outbreak strain  
7 of *Salmonella* Newport was identified in the ground beef. Whole genome  
8 sequencing showed that the *Salmonella* identified in the ground beef was  
9 closely related genetically to the *Salmonella* in samples from ill people. USDA-  
10 FSIS and state partners traced the source of the ground beef eaten by ill  
11 people in this outbreak to JBS Tolleson, Inc.  
12
- 13 12. On October 4, 2018, JBS Tolleson, Inc. recalled approximately 6.5 million  
14 pounds of beef products that may be contaminated with *Salmonella* Newport.  
15 On December 4, 2018, JBS Tolleson, Inc. recalled an additional 5.2 million  
16 pounds of beef products.  
17
- 18 13. The Tolleson facility, in operation for about 45 years, processes meat under  
19 various brands including 5 Star Beef, Cedar River Farms, Showcase, La  
20 Herencia, Four Star, and Clear River. A July 2017 notice from the USDA's  
21 Food Safety and Inspection Service accused the Tolleson facility's president  
22 of enabling "egregious" and "inhumane" practices with livestock. Officials  
23 found two "mentally incoherent" cows laying on their side and "moaning as if  
24 in pain." The inspector asked for the cows to be euthanized but one died in its  
25 pen before it could be put down. According to an October 2017 agency  
26  
27  
28

document, the USDA inspectors deferred action against JBS Tolleson and gave them a chance to implement a proposed action plan.

14. The 2018 recall announcement came more than a year after the U.S. Department of Agriculture sent the enforcement notice to the company's president and months after one of the company's plants in North Carolina recalled 35,000 pounds of raw ground beef.

### ***Salmonella Infections***

15. Salmonella is an enteric bacterium, which means that it lives in the intestinal tracts of humans and other animals. Salmonella bacteria are usually transmitted to humans by eating foods contaminated with human or animal feces. Contaminated foods usually look and smell normal. Contaminated foods are often of animal origin, but all foods, including vegetables, may become contaminated. An infected food handler who neglects to wash his or her hands with soap and warm water after using the bathroom may also contaminate food.
16. Once in the lumen of the small intestine, the bacteria penetrate the epithelium, multiply, and enter the blood within 24-72 hours. As few as 15-20 cells of Salmonella bacteria can cause salmonellosis or a more serious typhoid-like fever. Variables, such as the health and age of the host and virulence differences among the serotypes, affect the nature and extent of the illness. Infants, elderly, hospitalized, and immune suppressed persons are the



1 populations that are most susceptible to disease and suffer the most severe  
2 symptoms.

3  
4 17. The acute symptoms of Salmonella gastroenteritis include the sudden onset  
5 of nausea, abdominal cramping, and diarrhea lasting several days. The  
6 diarrhea often turns bloody. There is no real cure for Salmonella infection,  
7 except treatment of the symptoms. Persons with severe diarrhea may require  
8 rehydration, often with intravenous fluids.

9  
10 18. Persons with diarrhea usually recover completely, although it may be several  
11 months before bowel habits return entirely to normal. A small number of  
12 persons who are infected with Salmonella will go on to develop pains in their  
13 joints, irritation of the eyes, and painful urination. This development is called  
14 Reiter's syndrome or reactive arthritis, and it can last for months or years,  
15 sometimes leading to chronic arthritis that is difficult to treat. Antibiotic  
16 treatment does not make a difference in whether the person later develops  
17 arthritis.  
18

19  
20 **Plaintiff Margarita Chavez's Injuries**

21 19. Plaintiff Margarita Chavez purchased ground beef manufactured by  
22 Defendants from the Walmart located at 3728 N. Prince St. in Clovis, New  
23 Mexico on September 2, 2018.

24  
25 20. Plaintiff Margarita Chavez consumed this ground beef for breakfast the  
26 following day, September 3, 2018.  
27  
28

- 1 21. The following Saturday, September 9, 2018, Plaintiff Margarita Chavez  
2 experienced the onset of her *Salmonella* infection when she started to feel  
3 queasy. By the next day, she had developed severe abdominal pain, diarrhea,  
4 fever, and vomiting.  
5
- 6 22. Plaintiff Margarita Chavez sought medical care that same day, September 10,  
7 2018, at the ExpressCare in Clovis, New Mexico.  
8
- 9 23. Given the severity of her condition, medical personnel at ExpressCare  
10 recommended Plaintiff Margarita Chavez go to the hospital. Plaintiff then went  
11 to Plains Regional Medical Center in Clovis, New Mexico.  
12
- 13 24. Plaintiff Margarita Chavez remained hospitalized until September 17, 2018.  
14 While in the hospital, Plaintiff's stool tested positive for *Salmonella*.  
15
- 16 25. Further confirmatory testing at the New Mexico Scientific Laboratory Division  
17 indicated that Plaintiff Margarita Chavez was a confirmed case in the 2018  
18 *Salmonella* Newport outbreak linked to JBS Tolleson ground beef (Outbreak  
19 code: 1808MLJJP-2).  
20
- 21 26. Once discharged from the hospital, Plaintiff Margarita Chavez continued to  
22 have follow-up appointments as she continued to recover from her *Salmonella*  
23 infection. Her symptoms continued well into October 2018.

#### 24 **Plaintiff Dustin Potter's Injuries**

- 25 27. Plaintiff Dustin Potter consumed some of the ground beef prepared by Plaintiff  
26 Margarita Chavez on September 3, 2018.  
27  
28



- 1 28. On or about September 14, 2018, Plaintiff Dustin Potter began experiencing  
2 abdominal pain, cramping, and fatigue.  
3  
4 29. He eventually developed bloody diarrhea and sought medical attention on  
5 September 26, 2018 at Plains Regional Hospital.  
6  
7 30. A stool sample collected while Plaintiff Dustin Potter was at the hospital tested  
8 positive for *Salmonella*.  
9  
10 31. Further testing at the New Mexico Scientific Laboratory Division indicated  
11 Plaintiff Dustin Potter was a confirmed case in the 2018 *Salmonella* Newport  
12 outbreak linked to JBS Tolleson ground beef.  
13  
14 32. Plaintiff Dustin Potter had a follow-up appointment after his hospital visit as he  
15 recovered from his *Salmonella* infection. He continued to have a sensitive  
16 stomach and acid reflux through January 2019 and still feels his digestive  
17 system has not returned to normal.

18 **CLAIM ONE**  
19 **STRICT LIABILITY**

- 20 33. Plaintiffs reallege and incorporate each and every allegation contained in  
21 paragraphs 1 through 32, above, as though set forth fully herein.  
22  
23 34. Defendants manufactured and sold the adulterated food product, ground beef,  
24 that injured Plaintiff.  
25  
26 35. Defendants manufactured food products, and ground beef in particular, for  
27 sale to the public.  
28  
36. Ground beef that is contaminated with *Salmonella* is unsafe and thus defective  
when used in a reasonably foreseeable manner—i.e., consuming it.

- 1 37. *Salmonella*-contaminated ground beef is unfit for human consumption, and  
2 poses an unreasonable risk of injury to consumers because reasonably  
3 prudent persons, having full knowledge of the risk, would find the risk  
4 unacceptable.  
5
- 6 38. The ground beef that Plaintiffs purchased and consumed from Defendants was  
7 contaminated with *Salmonella* and was therefore, as a result, defective and  
8 unreasonably dangerous.  
9
- 10 39. The ground beef Plaintiffs purchased and consumed was contaminated with  
11 *Salmonella* when it left the control of Defendants.  
12
- 13 40. Plaintiffs' consumption of the contaminated ground beef caused them to  
14 become infected with *Salmonella* and suffer injury as a direct and proximate  
15 result.  
16
- 17 41. Defendants are strictly liable to Plaintiffs for the harm proximately caused by  
18 the manufacture and sale of unsafe and defective ground beef.  
19

20 **CLAIM TWO**  
21 **NEGLIGENCE AND NEGLIGENCE *PER SE***  
22

- 23 42. Plaintiffs reallege and incorporates each and every allegation contained in  
24 paragraphs 1 through 42, above, as though set forth fully herein.  
25
- 26 43. Defendants designed, manufactured, distributed, and sold ground beef that  
27 was contaminated with *Salmonella*, a harmful pathogen.  
28
44. Defendants owed a duty to all persons who consumed their products, including  
Plaintiffs, to manufacture and sell ground beef that was safe to eat, that was

1 not adulterated with harmful pathogens, like *Salmonella*, and that were not in  
2 violation of applicable food and safety regulations.

3  
4 45. Defendants breached the duties owed to the ultimate consumers of their  
5 ground beef products by committing the following acts and omissions of  
6 negligence:

- 7
- 8 • Failure to adequately maintain or monitor the sanitary conditions of their  
9 products, premises, equipment and employees;
  - 10 • Failure to properly operate their facilities and equipment in a safe, clean,  
11 and sanitary manner;
  - 12 • Failure to apply their food safety policies and procedures to ensure the  
13 safety and sanitary conditions of their food products, premises, and  
14 employees;
  - 15 • Failure to apply food safety policies and procedures that met industry  
16 standards for the safe and sanitary production of food products, and the  
17 safety and sanitary condition of their premises and employees;
  - 18 • Failure to prevent the transmission of *Salmonella* to consumers of their  
19 ground beef;
  - 20 • Failure to properly train their employees and agents how to prevent the  
21 transmission of *Salmonella* on their premises, from their facilities or  
22 equipment, or in their food products;
  - 23 • Failure to properly supervise their employees and agents to prevent the  
24 transmission of *Salmonella* on their premises, from their facility or  
25 equipment, or in their food products.

26 46. Defendants had a duty to comply with all statutes, laws, regulations, or safety  
27 codes pertaining to the manufacture, distribution, storage, and sale of their  
28 ground beef, but failed to do so, and were therefore negligent. Plaintiffs were  
among the class of persons designed to be protected by these statutes, laws,



1 regulations, safety codes or provisions pertaining to the manufacture,  
2 distribution, storage, and sale of similar food products.

3  
4 47. Defendants owed to all persons who consumed their ground beef a duty to  
5 maintain their premises in a sanitary and safe condition so that the ground beef  
6 they manufactured and sold would not be contaminated with a harmful  
7 pathogen, like *Salmonella*.

8  
9 48. Defendants owed a duty to Plaintiffs to use reasonable care in the  
10 manufacture, distribution, and sale of their food products to prevent  
11 contamination with *Salmonella*. Defendants breached this duty.

12  
13 49. Plaintiffs' injuries proximately and directly resulted from the negligence of  
14 Defendants, and from these Defendants' violations of statutes, laws,  
15 regulations, and safety codes pertaining to the manufacture, distribution,  
16 storage, and sale of food.

17 **CLAIM THREE**  
18 **BREACH OF WARRANTY**

19 50. Plaintiffs reallege and incorporate each and every allegation contained in  
20 paragraphs 1 through 50, above, as though set forth fully herein.

21  
22 51. By offering ground beef for sale to the general public, Defendants impliedly  
23 warranted that such ground beef was safe to eat, that it was not adulterated  
24 with a harmful pathogen, and that the ground beef had been safely prepared  
25 under sanitary conditions.

26  
27 52. Defendant breached the implied warranties with regard to the ground beef they  
28 manufactured and sold to Plaintiffs.

1 53. Plaintiffs' injuries proximately and directly resulted from Defendants' breach of  
2 implied warranties, and Plaintiffs are thus entitled to recover for all actual,  
3 consequential, and incidental damages that flow directly and in a foreseeable  
4 fashion from these breaches.  
5

6 **DAMAGES**

7 54. Plaintiffs reallege and incorporate each and every allegation contained in  
8 paragraphs 1 through 53, above, as though set forth fully herein.  
9

10 55. As the direct and proximate result of the Defendants' acts and omissions,  
11 Plaintiffs suffered and are entitled to recover compensation for damages  
12 including medical expenses both past and future, pain and suffering,  
13 disfigurement, the loss of enjoyment of his life, lost wages and lost earning  
14 capacity, loss of consortium damages and other damages as would be  
15 anticipated to arise under the circumstances, which shall be fully proven at the  
16 time of trial.  
17

18 **PRAYER FOR RELIEF**

19  
20 WHEREFORE, Plaintiffs pray as follows:

- 21 1. That the Court award Plaintiffs judgment against Defendants to fully and fairly  
22 compensate Plaintiffs for all general, special, incidental, and consequential  
23 damages incurred, or to be incurred, by Plaintiff as the direct and proximate  
24 result of the acts and omissions of Defendants.  
25  
26 2. That the Court award all such other sums as shall be determined to fully and  
27 fairly compensate Plaintiffs for all general, special, incidental and  
28

1 consequential damages incurred, or to be incurred, by Plaintiffs as the direct  
2 and proximate result of the acts and omissions of Defendants;

- 3  
4 3. That the Court award Plaintiffs their costs, disbursements, and reasonable  
5 attorneys' fees incurred;
- 6 4. That the Court award Plaintiffs the opportunity to amend or modify the  
7 provisions of this Complaint as necessary or appropriate after additional or  
8 further discovery is completed in this matter, and after all appropriate parties  
9 have been served;
- 10  
11 5. That the Court award such other and further relief as it deems necessary and  
12 proper in the circumstances.

13  
14 **JURY DEMAND**

15 Plaintiffs demand a trial by jury on all issues so triable with the maximum number  
16 of jurors permitted by law.

17  
18 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of September 2021.

19  
20 **HARMON, BARNETT & MORRIS, PC**

21  
22 /s/ Tye Harmon

23 Tye Harmon  
24 119 S. Main St.  
25 Clovis, New Mexico 88101

26 **O'STEEN & HARRISON, PLC**

27 Jonathan V. O'Steen  
28 Lincoln Combs

Attorneys for Plaintiffs



**CERTIFICATE OF SERVICE**

I hereby certify that on the 1<sup>st</sup> day of September 2021, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

/s/ Tye Harmon

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